

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.190 of 2004

Reserved on: June 25, 2007

Decided on : July 5, 2007.

Ram Lal

....Appellant.

VERSUS

State of Himachal Pradesh

....Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Anup Chitkara, Advocate.

For the Respondent : Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.

Surjit Singh, Judge

Appellant is aggrieved by the judgment, dated 5.3.2004, of Sessions Judge, whereby he has been convicted of an offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act for allegedly possessing 2.500 Kgs of *Charas* and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.1,00,000/-, in default of payment of fine to undergo rigorous imprisonment for a further period of one year.

2. Prosecution case, as per evidence on record, is as follows. On 12.5.2003, a police party headed by PW-3 SI Kaur Singh, of which HHC Darshan Singh (PW-5), Constable Mukesh Kumar (PW-1) and Constable Nihal Chand were the other members, went to a place called Gugra, falling within the jurisdiction of Police Station Ani, to organize a *Naka*. Around 10.30 in the night they noticed moving light of a torch towards a hill. They

Whether the reporters of the local papers may be allowed to see the Judgment?

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spotted that three persons were coming down towards the road where *Naka* had been organized. The Police officials, above named, laid an ambush near the point where the path along which the three persons were seen descending, joins the road. After some time all the three persons reached that point. They were overpowered. The appellant was found to be carrying a polythene bag which contained *Charas*. His two companions were not carrying anything. The *Charas*, which was being carried by the appellant, was seized. Two samples, each weighing 25 grams, were separated. The bulk *Charas* and the samples were made up into three separate parcels and sealed with a seal which produced the impression of English letter 'T'. One of the two samples was sent to the Chemical Examiner, who gave the opinion that the sample contained contents of *Charas*.

3. On receipt of the report of the Chemical Examiner, the appellant alongwith his companions, who were alleged to be his co-conspirators, was sent up for trial. The trial Court convicted and sentenced the appellant, as aforesaid. His two alleged co-conspirators were, however, acquitted.

4. Submissions made on behalf of the appellant are threefold. We proceed to examine and give our findings thereon one-by-one.

5. First submission is that there had not been any prior information about the commission of any offence nor had any offence been committed, which needed to be investigated and, therefore, the very story of the police having gone to the place of the alleged seizure is doubtful. It was also submitted that the manner in which the police officials testified to have overpowered the appellant and his alleged two co-conspirators suggested that they acted with utter disregard to the dignity of the citizens of a free country and, therefore, their testimony requires very close scrutiny.

6. We find no merit in the submission. Normally, *Nakas* are organized by the Police during night time with a view to checking and preventing crime. The *Nakas* are not organized only when there is some prior information that a cognizable offence is going to be committed or in connection with the investigation of a crime reported to have already been committed. Normally, when people are spotted at odd hours of night, moving in isolated places suspicion arises that they are out to commit an immoral or illegal act and if the Police people see them and ambush and overpower them that cannot be taken to be an act of highhandedness on their part or an act violating human dignity.

7. Next submission made on behalf of the appellant is that the Police have suppressed the true facts regarding the place and the time of the commission of the crime. It was pointed out that as per evidence of the prosecution itself, the police officials reached the spot at 10.30 p.m. and about 20 minutes later three persons, including the appellant, were seen climbing down the hill with a lighted torch and thus the time of their being overpowered and apprehended should be around 10.50 p.m., but in the report the time of their apprehension is written as 10.30 p.m. It was also submitted that the time of recording of the FIR at the Police Station is 11.30 p.m. whereas, according to the testimony of the prosecution witnesses themselves, the walking distance between the place of incident and the Police Station is 2½ hours. Further, it was submitted that according to the testimony of PW-3 SI Kaur Singh, PW-3 Darshan Singh and PW-1 Mukesh Kumar, the report, Ex. PW-3/D, for the formal registration of the case was drawn after about one hour of the seizure of the *Charas* and if it is so how could Nihal Chand Constable, through whom this report was sent to the Police Station, have reached the Police Station at 11.50 p.m., the time of receipt of the information at the Police Station, recorded in Column No.3(b) of FIR Ex. PW-2/A.

8. We have considered this submission in the light of the defence of the appellant. The defence of the appellant is that as a matter of fact he was arrested at Ani on 12.5.2003 at 1 p.m. where he had gone to seek medical treatment at the hospital.

9. It is true that on Ex. PW-3/D, the report sent from the spot for registration of the case, the time written below the signature of PW-3 Kaur Singh has been apparently changed by overwriting from 11.50 p.m. to 11.30 p.m., but PW-3 Kaur Singh and other witnesses, who testified that Nihal Chand left the spot with the report at 11.30 p.m., were not confronted with the overwriting regarding the time of the conclusion of the report Ex. PW-3/D, as written at the bottom.

10. Again, though the witnesses of the prosecution have very categorically stated that the walking distance between the spot and the Police Station is 2½ hours, there is nothing on the record suggesting that Nihal Chand went to the Police Station from the spot with report Ex. PW-3/D on foot. Also, there is nothing on the record suggesting that the spot and the Police Station are not connected by motor-able road. No suggestion was thrown to the prosecution witnesses nor is there any evidence on record indicating that the distance could not have been covered within 15-20 minutes by means of a vehicle. Under these circumstances, it cannot be said that the place and the timing of the alleged recovery of *Charas* have been changed. This is especially so when the defence taken by the appellant is proved to be false by the contradiction in the suggestions thrown to the witnesses of the prosecution and what the appellant has stated in his examination under Section 313 of the Code of Criminal Procedure. To the witnesses of the prosecution it was suggested that the appellant had gone to Ani to buy some articles on 22.5.2003 when the Police took him to the Police Station, but in his statement under Section 313 of the Code of Criminal Procedure the appellant says that he had gone

to Ani to seek medical treatment at the hospital. The contradiction renders the defence plea unbelievable.

11. Next it was submitted that the appellant was sent up for trial for possessing *Charas* and the *Charas*, as per definition contained in sub-clause (a) of Clause (iii) of Section 2 of the Narcotic Drugs and Psychotropic Substances Act, means resin, in whatever form, whether crude or purified, obtained from cannabis plant and also includes concentrated preparation known as Hashish oil or liquid Hashish. It has been submitted that in the present case, as per report of the Chemical Examiner, the entire sample stuff was not resin or say *Charas*, but only a part of it, to the extent of 30.28 per cent, was resin and, hence, the appellant cannot be said to be in possession of 2.500 kgs. of *Charas*. He says that what was in possession of the appellant was not whole *Charas* but something which included *Charas* (resin) to the extent of 30.28 per cent only and the rest of the stuff was some unknown substance about which report of the Chemical Examiner is silent. He has taken us through the report of the Chemical Examiner, per which the sample contained contents of *Charas*.

12. We find ourselves in agreement with the aforesaid submission of the learned counsel for the appellant. His submission is supported by the judgment, delivered by a Division Bench of this Court, in *Dharam Pal versus State of Himachal Pradesh and another appeal (Criminal Appeal Nos.491 & 510 of 2003)*, decided on 15.5.2007. In the aforesaid case, it has been held that only the resin content of the stuff is *Charas* and that in the absence of the report of the Chemical Examiner about the rest of the contents of the stuff, the quantity of the *Charas*, based on the percentage of the resin found therein by the Chemical Examiner, is required to be worked out and the appellant-accused is to be held responsible for possessing *Charas* only to the extent, the stuff contained the resin content in it.

13. As noticed hereinabove, the total quantity of stuff recovered from the appellant was 2.500 kgs. The Chemical Examiner has found resin content in it to the extent of 30.28 per cent. That means the *Charas*/resin content in the recovered stuff was 757 grams. This quantity is less than the commercial quantity, as specified vide Notification No. S.O. 1055(E), dated 19th October, 2001, issued by the Central Government, even though more than the upper limit of the small quantity fixed by the same Notification. Thus, the appellant is liable to be punished not under Section 20(C) of the Narcotic Drugs and Psychotropic Substances Act, as done by the trial Court, but under Section 20(B) of the said Act for which no minimum sentence is prescribed. The offence under Section 20(B) is punishable with imprisonment that may extend to ten years and with fine which may extend to Rs.1,00,000/-. Looking to the quantity of resin/*Charas* found in the stuff recovered from the appellant, we feel that the ends of justice would be met in case his sentence is reduced from ten years rigorous imprisonment and a fine of Rs.1,00,000/- to five years rigorous imprisonment and a fine of Rs.20,000/-, in default of payment of fine simple imprisonment for a further period of six months. We order accordingly.

Appeal stands disposed of.

(Surjit Singh), J.

July 5, 2007_(sd)

(Kuldip Singh), J